

BOARD OF APPEALS CASE NO. 4980

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BEFORE THE

APPLICANT: Humane Society of
Harford County

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ZONING HEARING EXAMINER

REQUEST: Expansion of a non-
conforming use and variance from the
required setbacks in an AG District;
2208 Connolly Road, Fallston

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/24/99 & 12/1/99

HEARING DATE: January 12, 2000

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Record: 11/26/99 & 12/3/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant is the Humane Society of Harford County. The Applicant is requesting approval to expand a non-conforming use or approval of a Special Exception, in the alternative, to construct a new facility, and a variance from the required 200 foot setback from all lot lines.

The subject property is located at 2208 Connolly Road in the Third Election District. The parcel is identified as Parcel No. 82, in Grid 1-C, on Tax Map 55. The parcel contains 25.213 acres, m/l, all of which is zoned Agricultural.

Mr. David L. Sanborn appeared and testified that he is the President of the Humane Society of Harford County and that the Society has operated on the subject property since 1947. Mr. Sanborn said the Applicant's use of the property is a non-conforming use, which the Applicant seeks to expand or, in the alternative, the Applicant is requesting a Special Exception to alleviate the non-conformity.

Mr. Sanborn testified that the proposed new facility will be approximately 170 feet from the property line. He said that the existing buildings within 30 feet of the property line will either be relocated or demolished. The witness said that the Society's plans are to construct the new facility during calendar year 2000, and that he was not aware of any adverse impact which the Applicant's use of the property has on neighboring properties, or any adverse impact the new facility will have if the requested approvals are granted.

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Mr. Stephen K. Nolan appeared and qualified as an expert in the field of engineering. Mr. Nolan said that the subject property is unique in several ways including, but not limited to, its size and shape, topography, and environment. Mr. Nolan said that if the setback variance is not granted, the Applicant would experience unreasonable hardship and practical difficulty. Some of the reasons cited by Mr. Nolan as unreasonable hardship and practical difficulty include a negative impact on the aesthetics of the property, a negative impact on the traffic flow patterns, a negative impact on the slopes existing on the property and the possible need to remove existing vegetation to replace pastures that would be lost due to changes necessary to maintain a 200 foot setback. Mr. Nolan testified that the proposed change to the use of the property would not violate the height or coverage regulations for the district and would not adversely impact adjacent properties, traffic patterns or the surrounding neighborhood. Mr. Nolan testified that the proposed use of the property by the Applicant would be compatible with other uses permitted as of right in the Agricultural District.

The final witness to testify was Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning. Mr. McClune testified the Applicant plans to modernize its facility and make it more efficient. He testified that the Staff of the Department of Planning and Zoning has considered the Applicant's request and that the Department recommends approval of the Special Exception to bring the property in compliance with the Zoning Code. He testified that the Staff found no adverse impact on surrounding properties. He also testified that the proposed new facility would actually increase the setbacks from Connolly Road from as little as 30 feet to slightly less than 200 feet. Mr. McClune also testified that the Applicant's new facility would have no greater impact on the property than approval of a kennel on another agriculturally zoned parcel elsewhere in the County.

Mr. Stanley Zolenas appeared and testified that he resides at 2213 Connolly Road, which is adjacent to the subject property. Mr. Zolenas said that he felt that the required 200 foot setback should not be reduced.

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CONCLUSION:

The Applicant is requesting an extension of a non-conforming use, pursuant to Section 267-21 of the Harford County Code or, in the alternative, a Special Exception to Section 267-53(H)(3) and a variance to the required 200 foot setback from lot lines in an Agricultural District.

Section 267-53(H) provides:

“Kennels. These uses may be granted in the AG, VB, B1 and B2 Districts, provided that all buildings for the shelter of animals and all runways shall be located at least two hundred feet from any lot line.”

The Applicant has requested a variance to the required 200 foot setback and is proposing a setback of 170 feet. The Applicant, through the testimony of Mr. Nolan and Mr. Sanborn, and supported by the testimony of Mr. McClune, is that the subject property is unique in several aspects and that denial of the variance would cause practical difficulty and unreasonable hardship. The testimony of the witnesses also established that a variance would not be detrimental to adjacent properties, even though the required setback is 200 feet. A reduction to 170 feet would not be detrimental to adjacent properties because the buildings which are currently located 30 feet from the setback line will be demolished or relocated, thereby increasing the setback to a minimum of 170 feet.

The Court of Appeals established the following guidelines with respect to the nature and degree of adverse effect which would justify denial of a special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Schultz v. Pritts, 291 Md. (1991).

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The Applicant established through the testimony of its witnesses that the use of the property as a kennel in an Agricultural District may be approved as a special exception. Their testimony established that the Applicant's proposed use of the property is compatible with uses permitted as of right in the Agricultural District. The testimony also established that the Humane Society has been using the subject property as a non-conforming use since 1947 to provide humane care for stray and abandoned animals.

As the case of Schultz v. Pritts provides, operation of a kennel in an Agricultural District has been determined to be permissible, absent any facts or circumstances rebutting the presumption. No testimony or other evidence was submitted to negate the presumption or to prove any adverse impact on the neighboring properties, nor was testimony offered that approval of the variance would impact the "Limitations, Guides and Standards" set forth in Section 267-9(I).

It is the finding of the Hearing Examiner that approval of the Special Exception will not have any greater impact on the subject property than approval of the request on any other agricultural parcel. It is, further, the finding of the Hearing Examiner that the subject property is unique for the reasons stated by the Applicant's witnesses and corroborated by Mr. McClune in his testimony. It is, further, the finding of the Hearing Examiner that approval of the Special Exception and variance will not have an adverse impact on adjacent properties or materially impair the purpose of the Code.


Therefore, it is the recommendation of the Hearing Examiner that the requested Special Exception and variance be approved, subject to the following conditions:

1. That the new facility generally conform to the Applicant's site plan. Minor changes to the plan and facility may be approved by the Director of Planning and Zoning.
2. That all necessary approvals, permits and inspections for the new buildings and demolition/removal of the old structures be obtained.

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3. That the Applicant submit a site plan for review through the Development Advisory Committee.

Date March 28, 2000



L. A. Hinderhofer do
Zoning Hearing Examiner